

U.S. Department of Justice

Washington, DC 20530

**Exhibit A to Registration Statement****Pursuant to the Foreign Agents Registration Act of 1938, as amended**

**INSTRUCTIONS.** Furnish this exhibit for EACH foreign principal listed in an initial statement and for EACH additional foreign principal acquired subsequently. The filing of this document requires the payment of a filing fee as set forth in Rule (d)(1), 28 C.F.R. § 5.5(d)(1). Compliance is accomplished by filing an electronic Exhibit A form at <https://www.fara.gov>.

**Privacy Act Statement.** The filing of this document is required by the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for the purposes of registration under the Act and public disclosure. Provision of the information requested is mandatory, and failure to provide this information is subject to the penalty and enforcement provisions established in Section 8 of the Act. Every registration statement, short form registration statement, supplemental statement, exhibit, amendment, copy of informational materials or other document or information filed with the Attorney General under this Act is a public record open to public examination, inspection and copying during the posted business hours of the Registration Unit in Washington, DC. Statements are also available online at the Registration Unit's webpage: <https://www.fara.gov>. One copy of every such document, other than informational materials, is automatically provided to the Secretary of State pursuant to Section 6(b) of the Act, and copies of any and all documents are routinely made available to other agencies, departments and Congress pursuant to Section 6(c) of the Act. The Attorney General also transmits a semi-annual report to Congress on the administration of the Act which lists the names of all agents registered under the Act and the foreign principals they represent. This report is available to the public in print and online at: <https://www.fara.gov>.

**Public Reporting Burden.** Public reporting burden for this collection of information is estimated to average .49 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Registration Unit, Counterintelligence and Export Control Section, National Security Division, U.S. Department of Justice, Washington, DC 20530; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

<b>1. Name and Address of Registrant</b> Myriad Creative 6033 W. Century Blvd., Suite 900 Los Angeles, CA. 90045	<b>2. Registration No.</b> <div style="font-size: 2em; font-family: cursive;">0549</div>
<b>3. Name of Foreign Principal</b>  Tourism Australia	<b>4. Principal Address of Foreign Principal</b>  2029 Century Park E Ste 3150, Los Angeles, CA 90067
<b>5. Indicate whether your foreign principal is one of the following:</b> <input checked="" type="checkbox"/> Government of a foreign country <sup>1</sup> <input type="checkbox"/> Foreign political party <input type="checkbox"/> Foreign or domestic organization: If either, check one of the following: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Partnership  <input type="checkbox"/> Corporation  <input type="checkbox"/> Association         </div> <div style="width: 45%;"> <input type="checkbox"/> Committee  <input type="checkbox"/> Voluntary group  <input type="checkbox"/> Other (<i>specify</i>) _____         </div> </div> <input type="checkbox"/> Individual-State nationality _____	
<b>6. If the foreign principal is a foreign government, state:</b> a) Branch or agency represented by the registrant Tourism branch  b) Name and title of official with whom registrant deals Lisa Wooldridge, Marketing Manager	
<b>7. If the foreign principal is a foreign political party, state:</b> a) Principal address   b) Name and title of official with whom registrant deals  c) Principal aim	

<sup>1</sup> "Government of a foreign country," as defined in Section 1(e) of the Act, includes any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any country, other than the United States, or over any part of such country, and includes any subdivision of any such group and any group or agency to which such sovereign de facto or de jure authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been recognized by the United States.

8. If the foreign principal is not a foreign government or a foreign political party:

a) State the nature of the business or activity of this foreign principal.

b) Is this foreign principal:

Supervised by a foreign government, foreign political party, or other foreign principal Yes ☐ No ☐

Owned by a foreign government, foreign political party, or other foreign principal Yes ☐ No ☐

Directed by a foreign government, foreign political party, or other foreign principal Yes ☐ No ☐

Controlled by a foreign government, foreign political party, or other foreign principal Yes ☐ No ☐

Financed by a foreign government, foreign political party, or other foreign principal Yes ☐ No ☐

Subsidized in part by a foreign government, foreign political party, or other foreign principal Yes ☐ No ☐

9. Explain fully all items answered "Yes" in Item 8(b). *(If additional space is needed, a full insert page must be used.)*

10. If the foreign principal is an organization and is not owned or controlled by a foreign government, foreign political party or other foreign principal, state who owns and controls it.

#### EXECUTION

In accordance with 28 U.S.C. § 1746, the undersigned swears or affirms under penalty of perjury that he/she has read the information set forth in this Exhibit A to the registration statement and that he/she is familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his/her knowledge and belief.

Date of Exhibit A	Name and Title	Signature
April 30, 2018	Mike Price, Executive Vice President	/s/ Mike Price
		eSigned

U.S. Department of Justice

Washington, DC 20530

**Exhibit B to Registration Statement****Pursuant to the Foreign Agents Registration Act of 1938, as amended**

**INSTRUCTIONS.** A registrant must furnish as an Exhibit B copies of each written agreement and the terms and conditions of each oral agreement with his foreign principal, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances by reason of which the registrant is acting as an agent of a foreign principal. Compliance is accomplished by filing an electronic Exhibit B form at <https://www.fara.gov>.

**Privacy Act Statement.** The filing of this document is required for the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for the purposes of registration under the Act and public disclosure. Provision of the information requested is mandatory, and failure to provide the information is subject to the penalty and enforcement provisions established in Section 8 of the Act. Every registration statement, short form registration statement, supplemental statement, exhibit, amendment, copy of informational materials or other document or information filed with the Attorney General under this Act is a public record open to public examination, inspection and copying during the posted business hours of the Registration Unit in Washington, DC. Statements are also available online at the Registration Unit's webpage: <https://www.fara.gov>. One copy of every such document, other than informational materials, is automatically provided to the Secretary of State pursuant to Section 6(b) of the Act, and copies of any and all documents are routinely made available to other agencies, departments and Congress pursuant to Section 6(c) of the Act. The Attorney General also transmits a semi-annual report to Congress on the administration of the Act which lists the names of all agents registered under the Act and the foreign principals they represent. This report is available to the public in print and online at: <https://www.fara.gov>.

**Public Reporting Burden.** Public reporting burden for this collection of information is estimated to average .33 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Registration Unit, Counterintelligence and Export Control Section, National Security Division, U.S. Department of Justice, Washington, DC 20530; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

1. Name of Registrant

Myriad Creative

2. Registration No.

0549

3. Name of Foreign Principal

Tourism Australia

Check Appropriate Box:

4. ☒ The agreement between the registrant and the above-named foreign principal is a formal written contract. If this box is checked, attach a copy of the contract to this exhibit.
5. ☐ There is no formal written contract between the registrant and the foreign principal. The agreement with the above-named foreign principal has resulted from an exchange of correspondence. If this box is checked, attach a copy of all pertinent correspondence, including a copy of any initial proposal which has been adopted by reference in such correspondence.
6. ☐ The agreement or understanding between the registrant and the foreign principal is the result of neither a formal written contract nor an exchange of correspondence between the parties. If this box is checked, give a complete description below of the terms and conditions of the oral agreement or understanding, its duration, the fees and expenses, if any, to be received.
7. Describe fully the nature and method of performance of the above indicated agreement or understanding.

Myriad works with the Los Angeles based office of Tourism Australia to assist in the development and execution of consumer and trade campaigns, including ad concept development, creative services, media recommendations, trade events and local US implementation of TA's head office initiatives.

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8. Describe fully the activities the registrant engages in or proposes to engage in on behalf of the above foreign principal.

Refer to #7

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9. Will the activities on behalf of the above foreign principal include political activities as defined in Section 1(o) of the Act and in the footnote below? Yes ☐ No ☒

If yes, describe all such political activities indicating, among other things, the relations, interests or policies to be influenced together with the means to be employed to achieve this purpose.

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### EXECUTION

In accordance with 28 U.S.C. § 1746, the undersigned swears or affirms under penalty of perjury that he/she has read the information set forth in this Exhibit B to the registration statement and that he/she is familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his/her knowledge and belief.

Date of Exhibit B	Name and Title	Signature
April 30, 2018	Mike Price, Executive Vice President	/s/ Mike Price
		eSigned

Footnote: "Political activity," as defined in Section 1(o) of the Act, means any activity which the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.



**Australian Government**



**TOURISM  
AUSTRALIA**

**AGREEMENT BETWEEN**

**TOURISM AUSTRALIA**

**AND**

**MYRIAD CREATIVE INC**

**in relation to the provision of Production and Creative Services for US and Canada**

**Head Office: Level 29, 420 George Street Sydney NSW 2000 Australia**

**Local Office: 2029 Century Park East, Suite 3150, Los Angeles, CA 90067, USA**

**[www.tourism.australia.com](http://www.tourism.australia.com)**

**SCHEDULE 1****AGREEMENT DETAILS****DATE            DATE OF EXECUTION****PARTIES**

**TOURISM AUSTRALIA** of Level 29, 420 George Street Sydney, NSW 2000 Australia, ABN 996 575 487 12 (TA)

**MYRIAD CREATIVE INC** of 6033 West Century Blvd Suite 900, Los Angeles CA 90045 ,  
(Contractor) Business Lic. # 0002741379-0001-0, Tax ID # 95-4249810

<b>NOTICES TO CONTRACTOR</b>	
<b>Contact</b>	Mr Al Merschen, President, CEO
<b>Address</b>	6033 West Century Blvd, Suite 900, Los Angeles, CA 90045, USA
<b>Telephone number</b>	+1-310-649-7700 ext 4444
<b>Fax number</b>	+1-310-649-7713
<b>Email address</b>	al@myriadmarketing.com
<b>NOTICES TO TA</b>	
<b>Contact</b>	Geraldine Cornwall, Corporate Services Manager
<b>Address</b>	2029 Century Park East, Suite 3150, Los Angeles, CA 90067, USA
<b>Telephone number</b>	310-695-3205
<b>Fax number</b>	310-695-3201
<b>Email address</b>	<a href="mailto:gcornwall@tourism.australia.com">gcornwall@tourism.australia.com</a>
<b>SERVICES</b>	
<b>Services</b>	<p>Tourism Australia requires the following services:</p> <ul style="list-style-type: none"> <li>a) Account management/servicing</li> <li>b) Creative concept development</li> <li>c) Creative production and execution</li> </ul>

	<p>Over the course of the contract, Myriad Creative Inc may be asked for any of the following services. Production budgets are set per fiscal (July-June).</p> <p><b>Account Management</b></p> <p>Tourism Australia requires responsive, accurate and proactive Account Management to ensure the smooth and effective coordination of Tourism Australia's Creation and Production services. Originality, creativity and excellent communication skills are essential to ensure the delivery of services described and ensure a positive and effective relationship exists between Tourism Australia and the Service Provider. The Service Provider must establish and maintain an identified Account Manager who will be principally responsible for the coordination of the Production and Creative Services under this Agreement. Responsibilities will include but not limited to, liaison with TA account manager on day to day account issues, dissemination of creative briefs to internal agency creative team, financial management and dispute resolution, generation of estimates, monthly billing using agreed rate cards with provision of all supporting documentation and ensure delivery of all required creative assets.</p> <p>In providing Creative Services to Tourism Australia, the Service Provider must only use persons who have been approved by Tourism Australia to work on the Tourism Australia account.</p> <p><b>Creative Concept Development</b></p> <p>Creative concepts that inspire and motivate targeted consumers to take an Australian vacation are an essential service component. Develop a range of digital and print concepts for brand and co-op campaigns as required.</p> <p><b>Creative production and execution</b></p> <p>Produce a range of broadcast, digital and print concepts for brand and co-op campaigns which may include, but not guaranteed or limited to the following:</p> <ul style="list-style-type: none"><li>• Broadcast, such as television, creating end frames, including digital television services, event screens, interactive television and internet TV, broadcast content;</li><li>• Flyers, brochures, newsletters, media content and advertorials;</li><li>• Out of home, including billboards, signs, postcards, transit sites, ambient sites, point of sale, digital interactive displays, stands and exhibitions;</li><li>• Direct marketing including direct mail, brochures and flyers;</li></ul>
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	<ul style="list-style-type: none"><li>• Events and promotions such as consumer launches, experiential sites and displays, press events, functions, competitions and incentive programs;</li><li>• Digital assets such as banner ads, HTML5 rich media banners, digital creative solutions for websites, mobile websites, tablets and mobile phones, video resizing, compression and editing.</li></ul> <p><b>Additional Services – Ad hoc services</b></p> <p>Ad hoc services may include content creation, video scripting, video editing and collateral production.</p> <p>Deliverables must include:</p> <ul style="list-style-type: none"><li>• Digital delivery of files to OMD and/or selected Media Channel</li><li>• Final download of all creative and assets for TA at completion of campaign</li><li>• Myriad will participate in bi-weekly WIP calls during the campaign activity window to review production deliverables.</li></ul> <p>*Indicative Production Schedule: Year 1: Brand Production, Partnership Production – October 2015 through June 30, 2015. Year 2: Production will occur between fiscal year of July 1, 2016 through June 30, 2017.</p> <p>Tentative Scope of Work for Year 1.</p> <p><b>Brand Communications and PR</b> – could include Print (4-5 brand executions repurposing global print templates or in some cases create new artwork if advertorial required), Digital (possible resizing/repurposing global brand digital assets -- up to 6-8 HTML5 executions in four standard sizes), Broadcast (output/traffic global TA spots for US/Canada standards), provide creative direction and PSDs/layouts for any creative units that we build directly with media channels as part of media buy. Production of OOH elements are also a strong possibility.</p> <p><b>Luxury</b> - Direct Mail (possible 32-page luxury brochure and 2 x simple trifold style DM brochures (food and wine / coastal and aquatic), will require some copywriting assistance, design, source print quotes and manage print production).</p> <p><b>Infographic</b> – Development of Infographic and/or possibly assorted event materials.</p> <p><b>Distribution</b> - Possibly 2 x industry 3-minute video updates (TA would provide outline and creative assets – scripting and video production required for online and presentation use.</p>
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	<p><b>Air New Zealand Co-op, Phase 2</b> – Air New Zealand's creative agency will take the lead on production, however possible assistance with creative direction/PSDs/layouts may be required. Delivery of TA's global digital / video assets to partner may be required.</p> <p><b>American Express</b> – Time Inc will develop print and online units, however possible assistance with creative direction/PSDs/layouts may be required. Delivery of TA's global digital / video assets to partner may be required.</p> <p><b>Air Canada</b> – Air Canada's creative agency will take the lead on production, however possible assistance with creative direction/PSDs/layouts may be required and assistance with advertorial production. Delivery of TA's global digital / video assets to partner may be required.</p> <p><b>Partnership Co-op Campaigns</b> – print and/or advertorial spreads (3-4) – Examples include American Express, Virtuoso, other airlines possible.</p> <p><b>Aussie Specialist Program</b> – small level of support with digital units (HTML5 and .jpg/gif) / simple collateral pieces (2-3 including flyers / promo cards).</p> <p><b>G'Day USA Tourism Summit / Business Events</b> – Event assistance including branded signage (directional signage and high res format for booths), e-invites, small program booklet, master Powerpoint, source collateral/merchandise piece for overprint for G'Day USA Tourism Summit event.</p> <p><b>Printing</b> of other collateral for Business Events may include 4-5 pieces (global templates usually supplied by TA Sydney for Business Events).</p>
<b>Milestones</b>	<p>Dates below subject to change based on final approval of Phase 2 of Brand Communications &amp; PR Campaign and Partnership Projects.</p> <p><b>2015/2016</b></p> <p>September 2015 – Agency Induction</p> <p>October 5 – Brand Communications &amp; PR production brief</p> <p>November – OMD to present media strategy and recommendation for Phase 2</p> <p>November – OMD/TA/Myriad to schedule production kick off call</p> <p>November - OMD to provide final Production Schedule for Brand Communications &amp; PR and Partnership Projects</p> <p>November/December – Myriad to provide TA with production estimate and schedule</p>

	<p>November/December – TA to approve all production costs</p> <p>December 11 – Quarterly Agency Review Meeting</p> <p>November/December/January – Myriad – Production</p> <p>January 2016 – Myriad to traffic all creative for testing</p> <p>March 11, 2016 – Quarterly Agency Review Meeting</p> <p>April 1, 2016 – Myriad to provide final reconciliation for Brand Communications &amp; PR and Partnership Project. Note: All jobs must be fully reconciled within 60 days of final delivery of assets. Full back up documentation of all costs including any third party costs should accompany reconciliation.</p> <p>June 1, 2016 – Myriad to deliver hard drive with all campaign source files to TA</p> <p>June 10, 2016 – Myriad to provide final reconciliation for all jobs within fiscal year (showing estimates, amount paid/credit or reconciliation. Invoices for fiscal year to be forwarded by June 10 in order to meet year end closing.</p> <p>June 30, 2016 – Quarterly Agency Review Meeting</p> <p>Note: Assets may include re-trafficking some existing brand assets plus creation of new, TBC once media plan finalized.</p>
<b>Reports</b>	<ul style="list-style-type: none"> <li>• Provide updates for OMD/TA/Myriad / Call Report after bi-weekly production call with OMD with any production details as requested (during campaign periods)</li> <li>• Update Google Production Calendar (or relevant production platform) when assets delivered.</li> <li>• Provide regular written status updates on production process via email to TA's Creative Services Manager</li> <li>• Provide written confirmation of any change in production estimate to TA's Creative Services Manager</li> </ul>
<b>DATES</b>	
<b>Commencement Date</b>	Date of Execution
<b>Expiration Date</b>	June 30, 2017
<b>Extension Period</b>	N/A

<b>FEES</b>	
<b>Fee breakdown Amount or Formula</b>	<p>Myriad to provide a detailed estimate to TA of production costs and services before job commences. The Estimate to include the creation of assets as defined by Media Schedule provided by OMD and Production Brief and approved by TA. TA must approve all estimates and will provide a PO# for reference. We will have one PO number for the entire fiscal year, each job will use the same PO.</p> <p>Estimate to be inclusive of Myriad's fees for account/project management, creative/art direction and production services.</p> <p><b>TERMS:</b> 50% payment upon estimate. If job varies by +/- 10% during production phase, a re-estimate is required by TA.</p> <p>Reconciliation of job to be provided within 60 days of delivery of final creative materials. Fees billed as quoted.</p> <p>Myriad to provide full reconciliation of costs (with backup paperwork) with final billing/reconciliation.</p> <p>Reimbursable costs and third-party vendor costs billed to actual.</p> <p>Fees based on agreed agency rate card for contract.</p> <p>Myriad will be required to provide monthly billing by the 15<sup>th</sup> of each month with signed estimate and backup paperwork for any reconciliations.</p> <p>A year end reconciliation report of jobs / estimates / reconciliations will be required for year end accounts (mid June each year) and for audit purposes.</p>
<b>Maximum Aggregate Fee Amount (Inclusive of Tax)</b>	<p>Year 1 – up to USD\$170,000</p> <p>Year 2 – up to USD\$185,000</p> <p>Total over two years not to exceed USD\$355,000**</p> <p><b>**Note:</b> This is the maximum contract value however the stated amount per year is not a guaranteed production budget and is subject to change.</p>
<b>INSURANCE</b>	
<b>Professional Indemnity Insurance Period</b>	Oct. 07, 2014 to Oct. 07, 2016
<b>Professional Indemnity Insurance Amount</b>	USD\$5 Million
<b>Public Liability Insurance Amount</b>	USD\$10 Million, aggregate of USD\$20 Million

<b>Additional Insurance Policies</b>	Worker's Compensation Effective 5/23/15 through 5/23/16
<b>MISCELLANEOUS</b>	
<b>Specified Personnel</b>	Al Merschen President/CEO T: <u>1 (310) 649 7700</u>  Mike Price Vice President T: <u>1 (310) 649 7700</u>  Myriad to provide a list of account personnel nominated to manage TA's business including appointment of Account Manager. [Please attached staff contact list].

## TERMS AND CONDITIONS

### 1. DEFINITIONS

In this Agreement:

**Additional Insurance Policies** means the insurance policies specified in Schedule 1 (if any), other than the insurance policies set out in clause 22.1.

**Applicable WHS law** means any applicable occupational health and safety law, including any corresponding WHS law (as defined in section 4 of the WHS Act).

**Agreement** means this document and its schedules.

**APPs** means the Australian Privacy Principles in Schedule 1 of the *Privacy Act 1988* (Cth).

**Business Day** means a day other than a Saturday, Sunday or a day that is a public holiday in the State of New South Wales.

**Commencement Date** means the date specified in Schedule 1.

**Confidential Information** means all information that:

- (a) is by its nature confidential;
- (b) is designated by TA as confidential; or
- (c) the Contractor knows or ought to reasonably know is confidential,

and includes without limitation:

- (d) the information comprised in or relating to the Intellectual Property Rights of TA or documents belonging to or supplied by TA to the Contractor;
- (e) all trade and business secrets or other intellectual property relating to any person whom the Contractor comes into contact with in the course and by reason of performing the Services;
- (f) information relating to the financial position, assets or liabilities of TA and any other matter that does or may affect the financial position or reputation of TA;
- (g) information relating to the internal management or structure of TA, or its Personnel;
- (h) information of or in the possession of TA which TA is required by law or any government agency to keep private and confidential; and
- (i) information relating to TA's suppliers or clients.

**Contractor's Contact** means the Contractor's contact specified in Schedule 1.

**Contract Material** means all Material:

- (a) brought into existence as part of, or for the purpose of performing the Services;
- (b) provided or required to be provided to TA as part of the Services; or derived at any time from Material referred to in paragraphs (a) or (b).

**Expiration Date** means the expiration date specified in Schedule 1 (subject to any extension pursuant to clause 3.4), unless this Agreement is terminated.

**Extension Period** means the date specified in 1.

**Fees** means the fees specified in Schedule 1.

**Force Majeure Event** means:

- (a) an act of God, fire, lightening, earthquake, explosions, flood, subsidence or other natural disaster, insurrection or civil disorder or military operations or act of terrorism, expropriation, strikes, lock outs or other industrial disputes of any kind not relating solely to the party affected, currency restriction, embargo, public utility or common carrier or computer disruption due to the effects of a virus or other malicious code introduced other than through the acts or omissions of the party seeking relief; and
- (b) any other event which is not within the reasonable control of the party affected (which in the case of the Agreement includes the reasonable control of its subcontractors),

but does not include any act or omission of a party or a change in law, legislation or government policy which from time to time regulates or affects the Services or the activities to which the Services relate during the term of this Agreement which has an increased cost effect on the delivery of the Services.

**GST** means goods and services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999*.

**Insolvency Event** means the occurrence of an event or circumstance that TA considers has or may have an adverse effect on the commercial or financial viability of the Contractor, the ability of the Contractor to perform its obligations under the Contract, or the ability of TA to enforce its rights against the Contractor under or in connection with the Contract.

**Intellectual Property Rights** includes all present and future rights conferred by law in or in relation to:

- (a) copyright (including rights in relation to phonograms and broadcasts);
- (b) inventions, patents, circuit layouts, plant varieties, designs, business and domain names, trade marks (including service marks); and
- (c) other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable or patentable,

but does not include:

- (d) Moral Rights; or
- (e) rights in relation to Confidential Information.

**Material** means material in any form (whether visible or not), including documents, advertisements (in print, electronic or recorded format), recordings on disc or any other form of storage, photographs, films, sound recordings, creative concepts, artwork, literary works, graphic works, musical works, models, designs, slogans, trade marks, trade names, logos, video tapes, transparencies, reports, products, equipment, information, data, software, software tools and software development

methodologies, and includes all releases, updates and amendments to the original Material.

**Maximum Aggregate Fee Amount** means the amount specified in Schedule 1.

**Milestones** means the milestones specified in Schedule 1.

**Moral Rights** means:

- (a) for authors, rights of integrity of authorship, rights of attribution of authorship, rights to not have authorship falsely attributed;
- (b) for performers, rights of integrity of performership, rights of attribution of performership, rights to not have performership falsely attributed,

and rights of a similar nature conferred by statute, that exist or that may come to exist, anywhere in the world in any works or any part of any work in which copyright subsists that is created under this Agreement.

**Notifiable Incident** has the meaning given to it in clause 15.9.

**Permitted Act** means any of the following classes or types of acts or omissions:

- (a) using, reproducing, recording, editing, adapting, altering or exploiting all or any part of the Contract Material, with or without attribution or authorship;
- (b) publishing or otherwise communicating the Contract Material to the public;
- (c) converting the Contract Material from hard copy to digital or other electronic machine readable form;
- (d) downloading the Contract Material;
- (e) posting the Contract Material on TA's website;
- (f) supplementing the Contract Material with any other Material; and
- (g) using the Contract Material in a different context to that originally envisaged,

but does not include false attribution of authorship.

**Personal Information** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**Personnel** means an officer, employee, agent, contractor, staff or professional adviser of either the Contractor or TA.

**Professional Indemnity Insurance Amount** means the amount specified in 1.

**Professional Indemnity Insurance Period** means the period specified in 1.

**Public Liability Insurance Amount** means the amount specified in 1.

**Reports** means the reports specified in Schedule 1.

**Services** means the services to be performed by the Contractor for TA in accordance with the provisions of this Agreement, particulars of which are set out in Schedule 1.

**Specified Personnel** means the personnel specified in Schedule 1 as required to perform all or part of the work constituting the Services.

**TA Contact Person** means the TA officer specified in Schedule 1.

**TA Material** means any Material:

- (a) provided by TA to the Contractor for the purposes of this contract; or
- (b) derived at any time from the Material referred to in paragraph (a).

**Term** means the period commencing on the Commencement Date and ending on the Expiration Date.

**WHS Act** means the *Work Health and Safety Act 2011* (Cth).

## 2. INTERPRETATION

2.1 In this Agreement unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words which are gender neutral or gender specific include each gender;
- (c) other parts of speech and grammatical forms of a word, or phrase defined in this Agreement have a corresponding meaning;
- (d) an expression importing a natural person includes a company, partnership, joint venture, association, corporation or other body corporate;
- (e) a reference to a thing (including, but not limited to, a chose-in-action or other right) includes a part of that thing;
- (f) any schedule and any attachment form part of this Agreement;
- (g) a reference to a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law judgment, rule of common law or equity or a rule of an applicable stock exchange and is a reference to that law as amended, consolidated or replaced;
- (h) a reference to writing is a reference to any representation of works, figures or symbols, whether or not in visible form;
- (i) a reference to a document includes all amendments or supplements to that document, or replacements or novations of it; and
- (j) a reference to a party to a document includes that party's successors and permitted assigns.

2.2 If any conflict arises between:

- (a) the terms and conditions contained in the clauses of this Agreement;
  - (b) any part of a Schedule; and
  - (c) any part of an attachment,
- the earlier named item will prevail.



- 2.3 Where the day on or by which something must be done is not a Business Day, that thing must be done on or by the following Business Day.
- 2.4 Headings are for convenience only and do not affect the interpretation of this Agreement.
- 2.5 This Agreement is not to be interpreted against the interests of a party merely because that party proposed this Agreement or some provision in it or because that party relies on a provision of this Agreement to protect itself.
- 2.6 A term or expression starting with a capital letter:
- (a) which is defined in this Agreement, has the meaning given to it in this Agreement;
  - (b) which is defined in the *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)* but is not defined in this Agreement, has the same meaning as given to it in the GST Act; and
  - (c) which is defined in *Tourism Australia Act 2004 (TA Act)* but is not defined in this Agreement, has the same meaning as given to it in the TA Act.
- 2.7 The law in force in the State of New South Wales shall govern this Agreement and the transactions contemplated by it, and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.
- 2.8 This Agreement constitutes and contains the entire agreement between the parties with respect to the Services, and supersedes, any prior or contemporaneous agreements, oral or written. There are no promises, terms, condition or obligations, oral or written, expressed or implied, other than those contained herein.

### **3. ENGAGEMENT, COMMENCEMENT AND DURATION**

- 3.1 TA engages the Contractor to provide the Services to TA on the terms and conditions of this Agreement and the Contractor accepts that engagement.
- 3.2 This Agreement commences on the Commencement Date.
- 3.3 The Contractor must provide the Services for the Term.
- 3.4 TA may, at its sole option, extend this Agreement for one or more of the Extension Periods (if any) by written notice to the Contractor provided at least 20 Business Days prior to the date of expiration of this Agreement.
- 3.5 TA is not obliged to extend this Agreement or enter into any further agreement with the Contractor.

### **4. CONTRACTOR OBLIGATIONS**

- 4.1 The Contractor must:
- (a) perform the Services as specified in Schedule 1, including the provision of any Reports and any other Contract Material;
  - (b) adopt relevant best practice and any industry standards or guidelines specified by TA;
  - (c) comply with any reasonable directions given by TA from time to time; and

- (d) comply with the timeframe for the performance of the Services specified in 1, including any Milestones.
- 4.2 While on any premises occupied by TA, the Contractor will, and will ensure that any of its Personnel, behave in a manner acceptable to TA and must comply with all reasonable directions and procedures relating to security and occupational health and safety in effect at any premises occupied by TA, including but not limited to non-smoking and the wearing of security passes.
- 4.3 The Contractor is responsible for the conduct of its Personnel at all times while engaged in performing the Services.
- 4.4 Subject to clause 23, neither the Contractor nor its Personnel assigned to perform the tasks are prevented from accepting work from other principals or using their own skill in any business in which they may lawfully be engaged during the Term or after its termination.
- 4.5 The Contractor must at all times during the Term of this Agreement:
  - (a) be responsible for making all deductions and performing all acts necessary in relation to the Contractor's Personnel under income tax legislation, superannuation legislation, payroll tax legislation, or other legislation which provides for long service leave or annual holidays to be paid; and
  - (b) pay and be solely responsible for all entitlements, whether relating to any contract or employment, long service leave, worker's compensation, superannuation, annual holidays or award entitlements of its employees or others who make their services available to the Contractor (including, without limitation, the Contractor's Personnel in relation to the obligations set out in this Agreement).
- 4.6 The Contractor is fully responsible for the performance of the Services and for ensuring compliance with this Agreement and will not be relieved of that responsibility because of any:
  - (a) subcontracting of the Services;
  - (b) acceptance by TA of any Specified Personnel or replacement Personnel; or
  - (c) payment made to the Contractor by TA.
- 4.7 TA's public image

The Contractor must ensure that the Contractor and its Personnel provide the Services to TA in a manner which will not:

  - (a) bring TA's name into disrepute; or
  - (b) otherwise damage TA's reputation or overall public image,

or threaten to do either of these things.
- 4.8 Co-operation with other agents
  - (a) Where requested by TA, the Contractor must co-operate with any third party TA directs the Contractor to co-operate with, including another agency or contractor appointed by TA to provide services, to ensure the integrated and efficient carrying out of TA's operations and provide such reasonable assistance to such other person as TA may request.

- (b) If TA directs the Contractor to co-operate with a third party as set out in clause 4.8(a), TA will provide the Contractor with details of the third party.

4.9 Value adding and continuous improvement

- (a) The Contractor must encourage its Personnel to manifest a proactive approach to providing the Services.
- (b) The Contractor must meet with TA as requested by TA at any time during the Term to discuss suggestions from either party for areas of continuous improvement that will improve the Contractor's efficiency, cost and management of the Services.

4.10 Compliance with TA policies and procedures

When providing the Services, the Contractor must comply with TA's policies and procedures as notified from time to time by TA to the Contractor.

**5. SUPPLY OF GOODS**

5.1 Where, as part of the Services, the Contractor supplies parts, consumables or other goods, these items are supplied on the following terms:

- (a) the goods will be owned by, and all risk will pass to, TA from the date of delivery of the goods to TA; and
- (b) the Contractor must ensure that:
  - (i) any goods (including consumables) are provided or used for the Services in a manner that minimises packaging waste;
  - (ii) the goods are fit for their intended purpose and comply with applicable Australian Standards;
  - (iii) TA obtains the full benefit of any warranties available in respect of the goods; and
  - (iv) if, when delivered or put into use by TA, the goods are defective in whole or part, they will be replaced or repaired at TA's sole discretion at no cost to TA.

**6. PERSONNEL**

6.1 The Contractor must ensure that any of its Personnel involved in the performance of the Services:

- (a) have the necessary expertise, capacity and facilities required to perform the Services; and
- (b) will comply with all relevant obligations or conditions binding on the Contractor under this Agreement.

6.2 The Contractor agrees that the Specified Personnel will perform work in relation to the Services. If any Specified Personnel are unable to perform the work, the Contractor must notify TA immediately.

- 6.3 TA may at any time require the Contractor to cease to permit any particular Personnel (including any Specified Personnel) employed by it to be engaged or continue to be engaged in carrying out the Contractor's duties under this Agreement.
- 6.4 If clause 6.2 or 6.3 applies, the Personnel will be replaced by the Contractor with the services of an alternative person acceptable to TA at no additional cost to TA.

**7. STANDARDS OF PERFORMANCE**

**7.1 The Services must be performed by the Contractor:**

- (a) exercising high professional standards of skill, care and diligence consistent with the standards of well managed operations performing services similar to the Services;
- (b) to ensure that the Services meet their purposes, are complete and are performed in a manner that achieves all standards of performance included in or referred to in the Agreement;
- (c) to ensure maximum efficiency and effectiveness in the provision of the Services;
- (d) to ensure that TA is fully and accurately informed on all matters which are relevant to the Services;
- (e) to comply with any applicable or relevant Standards Association of Australia Codes. If there are no Standards Association of Australia Codes applicable, comply with any other industry standards;
- (f) to comply with all legal, including statutory and regulatory requirements, including safety standards; and
- (g) to ensure all obligations, including deadlines, specified in the Agreement are fully satisfied.

**7.2 Where the Services include the provision of reports or the production of other documents or information, the Contractor must ensure that all:**

- (a) reports or other documents or information contain all requested information and are accurate and not misleading in any respect;
- (b) working papers are neatly and legibly compiled and contain adequate information to demonstrate the nature and extent of the Services and sufficient evidence to substantiate all conclusions, findings and opinions;
- (c) observations, comments, conclusions and recommendations are clearly explained and substantiated;
- (d) copies of all supporting documents are retained for review by TA if required; and
- (e) all advice provided orally or in writing is fit for purpose and specifically answers all issues and questions specified in or relevant to the Services in accordance with the Agreement.

**8. WARRANTIES OF PERFORMANCE**

**8.1 The Contractor warrants that:**

- (a) it has and will continue to have, the skills, qualifications and experience to provide the Services in an efficient and controlled manner, with a high degree of quality and responsiveness and to a standard that at a minimum complies with this Agreement;
- (b) it will continuously seek to innovate and improve the performance of the Agreement and will inform TA of reduced costs as they occur and of any innovations and improvements; and
- (c) it will use adequate resources, including adequate numbers of appropriately qualified personnel, to perform the Services in accordance with this Agreement.

**8.2 The Contractor warrants that it has full corporate power and authority to enter into, perform and observe its obligations under the Agreement and that the execution, delivery and performance of the Agreement has been duly and validly authorised by all necessary corporate action.**

**8.3 The Contractor warrants that it enters into the Agreement on its own behalf and not in its capacity as a trustee for any trust.**

**9. PAYMENT**

**9.1 Subject to clause 9.2, in consideration of the Contractor providing the Services specified in Schedule 1 in accordance with this Agreement, TA must pay the Contractor the Fees in the installments (if any) specified in Schedule 1.**

**9.2 The Fees payable by TA under this Agreement are capped at the Maximum Aggregate Fee Amount and the Contractor is not entitled to receive any Fee above the Maximum Aggregate Fee Amount.**

**9.3 The Contractor must perform its obligations under this Agreement at its own cost and will not be entitled to be reimbursed for any out of pocket expenses or disbursements incurred in connection with the performance of its duties under this Agreement other than as specified in Schedule 1.**

**9.4 TA may (in addition and without prejudice to any other right it may have) withhold or defer payment of any amount payable under this Agreement for so long as the Contractor has not completed, to the satisfaction of TA, that part of the Services to which the payment relates.**

**10. TAXES, DUTIES AND GOVERNMENT CHARGES**

**10.1 The Contractor acknowledges and agrees that TA makes no representations or warranties as to the amount and types of taxes to which the Contractor may be liable, whether in connection with this Agreement or otherwise.**

**10.2 Except as provided by this clause 10, the Contractor must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.**

**10.3 Unless otherwise indicated, all consideration for any supply made under this Agreement is inclusive of any GST imposed on the supply.**

- 10.4 If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Agreement, on receipt of a tax invoice from the supplier, the recipient must pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 10.5 No party may claim or retain from the other party under this Agreement any amount in relation to a supply made under this Agreement for which the first party may claim an input tax credit or decreasing adjustment.

## **11. STATUS OF CONTRACTOR**

- 11.1 It is acknowledged by the parties that in entering into this Agreement and in providing the Services, the Contractor has and shall have the status of an independent contractor and nothing contained in this Agreement shall contemplate or constitute the Contractor or any persons involved in performing the Services for any purpose to be servants, officers, agents or employees of TA.

## **12. INTELLECTUAL PROPERTY**

- 12.1 Subject to clause 12.2, the Contractor hereby assigns to TA all current and future right, title and interest, including all Intellectual Property Rights, in all Contract Material created by the Contractor such that all of the Contractor's right, title and interest, including any Intellectual Property Rights, in that material vest in TA immediately on creation.
- 12.2 Assignment of Intellectual Property Rights owned by third parties
  - (a) If any right, title and interest, including any Intellectual Property Rights in or in relation to the Contract Material, or a part of it, is not capable of vesting in TA on its creation under clause 12.1 because the Contractor itself is not creating the Contract Material, the Contractor must, at its own expense, do all things necessary to procure the assignment to TA of all Intellectual Property Rights subsisting in that material, either before or at the time of creation of that material, from each person who owns those rights.
  - (b) The Contractor must immediately notify TA in writing before the creation of any Contract Material if it is unable to comply in any respect with clause 12.2(a).
  - (c) Where the Contractor notifies TA under clause 12.2(b) that it is unable to obtain an assignment required by clause 12.2(a) and TA consents, in its absolute discretion, to the provision of a licence in respect of those unassignable Intellectual Property Rights, the Contractor must procure a licence in TA's favour that provides TA with the right to exercise all rights comprised in the copyright of the Contract Material (including the right to use, reproduce, adapt, perform and communicate that material to the public) for a period, and on terms, nominated by TA.
- 12.3 Moral Rights
  - (a) The Contractor must procure the irrevocable consent of each creator of any part of any Contract Material in which copyright subsists or any performer who participates in or performs in any Contract Material in which copyright subsists, to allow TA in its absolute discretion to:
    - (i) do any act or omission which would otherwise infringe any Moral Rights in the Contract Material;

- (ii) use the Contract Material (or a substantial part or adaptation of them):
      - (A) with or without attribution of authorship or performership;
      - (B) with or without other materials comprised in the Contract Material or any other text, data, sounds or images (whether animated or not);
      - (C) in any medium, in any context and in any way it sees fit;
    - (iii) add to, delete from or re-title the Contract Material, or materially distort, destroy, alter or any other way change the Contract Material; and
    - (iv) reproduce, publish, copy, adapt the Contract Material (or a substantial part or adaptation of them), or perform, communicate, show or exhibit the Contract Material (or a substantial part or adaptation of them) in or to the public.
  - (b) The Contractor must obtain the consents and releases described in clause 12.3 in writing in substantially the same form as the form provided in Schedule 2. The Contractor must provide TA with copies of each written consent obtained by the Contractor.
  - (c) If the Contractor subcontracts any of its obligations under this Agreement in accordance with clause 24, the Contractor must procure that all subcontractors obtain written consents to all acts and omissions described in clause 12.3.
- 12.4 The Contractor agrees that where TA supplies any TA Materials to the Contractor then:
- (a) all Intellectual Property Rights in TA's Materials shall remain TA's exclusive property;
  - (b) TA's Materials must not (except as agreed by TA in writing) be used or disclosed by the Contractor for any purpose other than the performance of the Contractor's obligations under this Agreement; and
  - (c) no term, condition or warranty (whether express or implied) as to the nature, quality or fitness of TA's Materials shall form part of, or be a collateral term of, any contract between the parties.
- 12.5 TA grants (or will procure) a royalty-free, non-exclusive licence for the Contractor to use, reproduce and adapt the TA Material for the purposes of this Agreement.
- 12.6 Material which at the date of this Agreement was developed and owned by the Contractor and incorporated into the Contract Material will remain the property of the Contractor.
- 12.7 The Contractor grants to (or will procure for) TA a permanent, irrevocable, sub-licensable, royalty-free, world-wide, non-exclusive licence to use, reproduce, adapt and exploit any Material referred to in clause 12.6 in conjunction with the Contract Material. The Contractor must, on request by TA, do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that TA may reasonably require in order to give effect to this clause 12.

12.8 The Contractor must procure from all authors of any Contract Material (other than TA Material) and (to the extent relevant) itself, consents to the performance of the Permitted Acts by TA or any person claiming under or through TA.

12.9 Trade marks

- (a) The Contractor will not, and will ensure that its Personnel and subcontractors do not, use TA's name or any trade mark owned or licensed by TA (**TA Trade Marks**) without the prior written consent of TA, and will submit a sample of the proposed use to TA for prior approval.
- (b) The Contractor must comply with all of TA's directions and guidelines concerning use of the TA's name or any TA Trade Mark, notified to the Consultant from time to time.
- (c) The Contractor must not use TA's name or any TA Trade Marks in a way likely to deceive or cause confusion or prejudice its distinctiveness or value or TA's goodwill or reputation.

12.10 The Contractor warrants that:

- (a) it is, or will be at the relevant time, fully entitled to deal with the Intellectual Property Rights in the Contract Material in accordance with the terms of this Agreement; and
- (b) the Contract Material does not infringe the Intellectual Property Rights or Moral Rights of any person.

12.11 The Contractor shall at all times indemnify and hold harmless TA from and against:

- (a) any damages, losses, claims, actions or expenses (including without limitation consequential loss and legal costs and expenses); and
- (b) liability incurred arising from any claim, demand, suit action or proceeding by any person,

where such loss or liability arose from the Contractor's use of any third parties' Intellectual Property Rights.

12.12 The Contractor must provide all Contract Material to TA on request but may retain a copy of the Contract Material where it is necessary for it to do so for its own bona fide record keeping purposes. For the avoidance of doubt, the Contractor may not use the Contract Material or any TA Material for any purpose other than the fulfillment of its obligations under this Agreement without the express consent in writing of TA.

### 13. **PRIVACY - PROTECTION OF PERSONAL INFORMATION**

13.1 This clause 13 applies only to the extent that the Contractor deals with Personal Information in providing Services under this Agreement.

13.2 The Contractor must:

- (a) use or disclose Personal Information obtained in the course of providing Services under this contract only for the purposes of this Agreement;
- (b) carry out and discharge the obligations contained in the APPs as if it were bound by them;
- (c) not do any act or engage in any practice which would be a breach of an APP;



- (d) not use or disclose Personal Information for direct marketing, unless that use or disclosure is explicitly required under this Agreement;
  - (e) not engage in an act or practice that would breach an APP, unless that act or practice is explicitly required under this Agreement;
  - (f) comply with any directions, guidelines, determinations or recommendations referred to and provided to the Contractor, to the extent that they are consistent with the requirements of this clause 13; and
  - (g) ensure that all Personnel required to deal with Personal Information for the purposes of this Agreement are made aware of the obligations of the Contractor set out in this clause 13.
- 13.3 The Contractor agrees to notify TA immediately if it becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in this clause 13, whether by the Contractor or a subcontractor, or the Personnel of the Contractor or subcontractor.
- 13.4 The Contractor agrees to ensure that any subcontract entered into by the Contractor for the purpose of fulfilling its obligations under this Agreement imposes on the subcontractor the same obligations that the Contractor has under this clause 13 (including this requirement in relation to subcontracts).

#### **14. CONFIDENTIALITY**

- 14.1 The Contractor must, and must ensure that its Personnel must:
- (a) keep all Confidential Information confidential;
  - (b) use all Confidential Information solely for the purposes of performing the Services;
  - (c) not disclose any Confidential Information to any third party; and
  - (d) not copy or record in any other form any part of the Confidential Information except as is strictly necessary for the purposes of performing the Services.
- 14.2 The Contractor acknowledges and must ensure that the Contractor's Personnel acknowledge that if the Contractor or its Personnel breach the obligations in clause 14.1, TA will suffer damage and an award of damages would be inadequate relief for a breach by the Contractor or its Personnel of the obligations in clause 14.1. The Contractor consents to TA obtaining an ex parte interlocutory injunction to restrain the Contractor or its Personnel from breaching the obligations in clause 14.1.
- 14.3 The Contractor is not in breach of the obligations imposed by this clause 14 where the information referred to in clause 14.1:
- (a) is disclosed by the Contractor to its advisors or Personnel solely in order to comply with obligations or to exercise rights under the Agreement;
  - (b) is or becomes public knowledge other than by breach of clause 14.1;
  - (c) is in the possession of the Contractor without restriction in relation to disclosure before the date of receipt from TA;
  - (d) is required by law to be disclosed; or
  - (e) has been independently developed or acquired by the Contractor.

- 14.4 Where Confidential Information is disclosed to another person pursuant to clause 14.3(a), the Contractor must notify the receiving person that the information is confidential and not disclose the information unless the receiving person agrees to keep the information confidential.
- 14.5 TA may at any time require the Contractor to arrange for any of its Personnel or any other person who will have access to Confidential Information to give a written undertaking in the form of a deed in favour of TA relating to the use and non-disclosure of Confidential Information.
- 14.6 Nothing in this clause 14 derogates from any obligation which the Contractor may have either under the *Privacy Act 1988* (Cth) or under this Agreement in relation to the protection of personal information.

**15. WORK HEALTH AND SAFETY**

- 15.1 The Contractor must ensure that the Services and the work conducted by the Contractor and any of the Contractor's Personnel complies with all applicable legislative requirements, standards and policies, and requirements of this Agreement, that relate to the health and safety of the Contractor, the Contractor's Personnel, TA's Personnel and third parties,
- 15.2 The Contractor must comply with its obligations under any applicable WHS law, and must ensure, so far as is reasonably practicable, that its officers (as defined by applicable WHS law) and workers comply with their obligations under applicable WHS law. The other provisions of clause 15 do not limit this sub-clause.
- 15.3 The Contractor must ensure, so far as is reasonably practicable, the health and safety of:
  - (a) workers engaged, or caused to be engaged by the Contractor; and
  - (b) workers whose activities in carrying out work are influenced or directed by the Contractor,while the workers are at work in relation to this Agreement.
- 15.4 The Contractor must ensure, so far as is reasonably practicable, that the health and safety of other persons (including TA's Personnel) is not put at risk from work carried out under this Agreement.
- 15.5 The Contractor must consult, cooperate and coordinate with TA in relation to its work health and safety duties.
- 15.6 Without limiting this Agreement, the Contractor must, on request, give all reasonable assistance to TA, by way of provision of information and documents, to assist TA and its officers (as defined in the WHS Act) to comply with the duties imposed under the WHS Act.
- 15.7 The Contractor must give all reasonable assistance to TA to assist TA in consulting with workers who carry out work for it (including, but not limited to, the Contractor's Personnel) who are, or are likely to be, directly affected by a matter relating to work health and safety.
- 15.8 TA may direct the Contractor to take specified measures in connection with the Contractor's work under this Agreement or otherwise in connection with the Services that TA considers reasonably necessary to deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons. The

Contractor must comply with the direction. The Contractor is not entitled to an adjustment to the Fees, or to charge additional allowances or expenses, merely because of compliance with the direction.

- 15.9 If an event occurs in relation to the Contractor's work under this Agreement that leads, or could lead, to the death or, or an injury or illness to, a person (Notifiable Incident), the Contractor must:
- (a) immediately report the matter to TA, including all relevant details that are known to the Contractor;
  - (b) as soon as possible after the Notifiable Incident, investigate the Notifiable Incident to determine, as far as it can reasonably be done:
    - (i) its cause; and
    - (ii) what adverse effects (if any) it will have on the Contractor's work under this Agreement, including adverse effects on risks to health and safety;
  - (c) as soon as possible after the Notifiable Incident, take all reasonable steps to remedy any effects of the Notifiable Incident on health and safety;
  - (d) as soon as possible after the Notifiable Incident, take all reasonable steps (including by instituting procedures and systems) to ensure that an event or circumstance of the kind that led to the Notifiable Incident does not recur;
  - (e) within 3 Business Days after the Notifiable Incident, give TA a written report giving further details of the Notifiable Incident, including the results of the investigations required by clause 15.9(b) and a statement of the steps the Contractor has taken or that the Contractor proposes to take as required by clauses 15.9(c) and (d); and
  - (f) within 3 months after the Notifiable Incident, give TA a written report giving full details of its actions in relation to the Notifiable Incident.

The Contractor's obligations under this clause 15.9 are in addition to any reporting obligation that the Contractor has under a written law.

- 15.10 The Contractor must fully co-operate, at its own cost, with any investigation by any government agency (including the Commonwealth) with respect to a Notifiable Incident, including parliamentary inquiries, boards of inquiry and coroner's investigations.
- 15.11 The Contractor must not enter into any subcontract for the purpose of directly or indirectly fulfilling its obligations under this Agreement unless such a subcontract obliges the subcontractor to comply with equivalent provisions to those contained in this clause 15.
- 15.12 A word or expression in this clause 15 that is:
- (a) used or defined in an applicable WHS law; and
  - (b) is not otherwise defined in this clause 15 or elsewhere in this Agreement,
- has, for the purposes of this clause 15, the meaning given to it under the applicable WHS law.

**16. COMPLIANCE WITH OTHER LAWS**

- 16.1 The Contractor agrees, in carrying out this Agreement, to comply with all legislation of the Commonwealth or of any State, Territory or local authority, and in particular:
- (a) the *Crimes Act 1914* (Cth);
  - (b) the *Racial Discrimination Act 1975* (Cth);
  - (c) the *Sex Discrimination Act 1984* (Cth);
  - (d) the *Disability Discrimination Act 1992* (Cth); and
  - (e) the *Equal Opportunity for Women in the Workplace Act 1999* (Cth).
- 16.2 The Contractor must not enter into a subcontract under this Agreement with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Commonwealth as an employer currently not complying with the Act.

**17. DEFAULT AND TERMINATION**

- 17.1 If the Contractor fails to satisfy any of its obligations under this Agreement, TA may:
- (a) immediately by notice in writing terminate this Agreement if it considers that the breach of the Contractor's obligation is not capable of remedy; or
  - (b) if it considers that the failure is capable of remedy, by notice require that the failure be remedied within seven Business Days or such other time specified in the notice and, if not remedied within that time, may terminate this Agreement immediately by giving a second notice,
- and TA may recover from the Contractor any loss or damage suffered by TA.
- 17.2 TA may also by notice terminate this Agreement immediately (but without prejudice to any prior right of action or remedy which TA has or may have) if an Insolvency Event occurs in relation to the Contractor.

**18. TERMINATION FOR CONVENIENCE**

- 18.1 TA may at any time and at its discretion terminate this Agreement or reduce the scope of the Services by giving 30 Business Days written notice to the Contractor. Upon receipt of a notice under this clause, the Contractor must:
- (a) as soon as practicable cease providing the Services as specified in the notice; and
  - (b) continue work on any part of the Services not affected by the notice.
- 18.2 The Contractor acknowledges and agrees that, except as provided for in clauses 18.3, the Contractor is not entitled to any damages or compensation arising out of the termination of this Agreement by TA pursuant to this clause.
- 18.3 In the event that this Agreement is terminated under clause 18.1, TA will:
- (a) pay to the Contractor a proportion of the Fees representing that portion of the Services that have been duly completed; and
  - (b) reimburse any expenses the Contractor unavoidably incurs relating entirely to Services not covered under clause 18.3(a).

- 18.4 TA shall not be liable to pay under the provisions of this clause any sum which, additional to any sums paid or due to or becoming due to the Contractor under the Agreement, would together exceed the full price of the Services ordinarily payable under this Agreement.
- 18.5 In the event of a reduction in the scope of the Services under clause 18.1, TA's liability to pay Fees and any other allowances or costs under this Agreement will, unless there is agreement in writing to the contrary, reduce proportionately with the reduction in the Services.
- 18.6 Within 10 Business Days of termination of this Agreement the Contractor must return to TA or destroy at TA's election all Confidential Information of TA in the possession, custody or power of the Contractor.

## **19. RECOVERY OF OVERPAYMENTS**

- 19.1 Where, prior to the expiration or earlier termination of this Agreement or any reduction in scope pursuant to clause 18.1, TA has made any initial or advance payment to the Contractor, and any amount of such payment has not been expended in provision of the Services in accordance with this Agreement, then the Contractor must repay such amount to TA within five Business Days of the date of such expiration or earlier termination or reduction in scope.
- 19.2 Where any amounts are or become due from TA to the Contractor, whether under this Agreement or for any other reason, TA may at its option deduct the amount referred to in clause 19.1 from the said amounts, and the Contractor agrees that the receipt of the balance of the said amounts shall be a good and valid discharge of the total amount due from TA.

## **20. CONTRACTOR INDEMNITY**

- 20.1 The Contractor at all times indemnifies TA and, holds it harmless from and against the full amount of any loss (including any indirect or consequential loss, legal costs, expenses and damages) or liability incurred by TA, arising out of or in relation to any claim by any person where such loss or liability was caused or contributed to by:
- (a) the Contractor's breach of any provision of this Agreement, or
  - (b) any wilful, unlawful or negligent act or conduct, or omission of the Contractor in connection with this Agreement.
- 20.2 The Contractor's liability to indemnify TA under clause 20.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of TA contributed to the relevant loss or liability.

## **21. LIMITATION ON TA'S LIABILITY**

- 21.1 To the extent permitted by law, TA's maximum aggregate liability to the Contractor (other than payment of the Fee) arising out of or relating to the performance of this Agreement or its breach by TA shall in no circumstances exceed the Maximum Aggregate Fee Amount.

## **22. INSURANCE**

- 22.1 The Contractor must effect or cause to be effected during the Term and, in respect of clause 22.1(b) only, for the Term and the Professional Indemnity Insurance Period

after the end of the Term, the following types of insurance policies on terms acceptable to TA:

- (a) public liability insurance written on an occurrence basis for an insured amount of not less than the Public Liability Insurance Amount per occurrence which covers the liability of the Contractor, and Personnel (including to TA) in respect of:
  - (i) loss of, damage to, or loss of use of, any real or personal property; and
  - (ii) the personal injury of, disease or illness (including mental illness) to, or death of, any person (other than an employee of the insured),arising out of the performance of the Services or the performance of this Agreement. The insurance must include cover for TA's property in the care, custody or control of the Contractor with a sub-limit acceptable to TA;
- (b) professional indemnity or 'errors and omissions' insurance for an insured amount of not less than the Professional Indemnity Insurance Amount for each claim and in the aggregate any 12 month policy period, with one automatic right of reinstatement, which covers the liability of the Contractor arising from a breach of duty owed in a professional capacity or an error or omission in judgement by reason of any act or omission of the Contractor or the Contractor's Personnel. The professional indemnity or 'errors and omissions' insurance must include cover for unintentional breaches of intellectual property and of trade practices related legislation; and
- (c) workers compensation as required by law.

22.2 The Contractor must effect or cause to be effected the Additional Insurance Policies (if any) or as TA may otherwise reasonably require, on terms acceptable to TA.

22.3 The Contractor must, in respect of each insurance referred to in clause 22.1 give TA:

- (a) acceptable proof of currency and coverage of the insurances before the commencement of this Agreement;
- (b) copies of all cover notes, certificates of currency, renewal certificates and endorsement slips, as soon as the Contractor receives them; and
- (c) on request, other evidence of the insurances which TA reasonably requires, including a copy of the policies.

22.4 The Contractor must ensure that each insurance referred to in clause 22.1 above (other than statutory insurances) is effected with reputable insurers with a security rating of A- or better by Standard and Poor's or the equivalent rating by another recognised rating agency.

22.5 The Contractor must immediately give notice to TA whenever an insurer of any of the insurances effected in compliance with clause 22.1 gives the Contractor a notice of cancellation, or any other notice in respect of the relevant policy of insurance, or the Contractor serves a notice of cancellation on the insurer.

22.6 The Contractor must ensure that in relation to the insurances to be maintained under clause 22.1 it:

- (a) does not do anything which prejudices any insurance;

- (b) if necessary, rectifies anything which might prejudice any insurance;
  - (c) reinstates an insurance policy if it lapses;
  - (d) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of TA;
  - (e) immediately notifies TA of any event which may result in an insurance policy lapsing or being cancelled;
  - (f) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance; and
  - (g) takes all reasonable steps to avoid and mitigate losses or liabilities otherwise insured under the policies.
- 22.7 If the Contractor fails to satisfy any of its obligations under clause 22.1, after TA gives notice of the failure to the Contractor and the Contractor has had a reasonable opportunity in the opinion of TA to cure the failure, TA is entitled to effect and maintain (and the Contractor must provide all reasonable assistance and information to allow TA to effect and maintain) such insurance policies and pay the premiums as necessary and, in relation to insurances required by clause 22.1, and recover the amount from the Contractor.
- 22.8 Nothing in this clause prevents TA from taking out insurance and exercising its rights under clause 22.7 without notice to the Contractor if TA becomes aware that an insurance policy required under clause 22.1 has lapsed, or will soon lapse.

### **23. CONFLICT OF INTEREST**

- 23.1 For the purposes of this clause 23, the term conflict of interest, without limitation, includes the following:
- (a) the provision of advice to, or the performance of any Services for, a person in a contractual relationship with TA that is connected with the Services; and
  - (b) any situation which, in the reasonable view of an impartial observer, may hinder or prevent the Contractor from performing the Services in the best interests of TA.
- 23.2 The Contractor warrants at the date of this Agreement and continues to warrant during the Term that no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement that has not been disclosed and consented to by TA in writing.
- 23.3 The Contractor must use best endeavours to ensure that a situation does not arise which may result in a conflict of interest. The Contractor must not engage in any activity, subject to clause 23.4, that may result in a conflict of interest arising or continuing.
- 23.4 Where a conflict of interest arises or is likely to arise in the performance of the Contractor's obligations under the Contract, the Contractor must immediately notify TA in writing and must follow all reasonable directions from TA to resolve or otherwise deal with the conflict.

**24. SUBCONTRACTING**

- 24.1 The Contractor must not subcontract the whole, or any part of the Services except:
- (a) with the prior written consent of TA; and
  - (b) on such conditions as TA in its absolute discretion thinks fit.
- 24.2 TA may revoke its consent to a subcontractor on reasonable grounds at any time, without obtaining the Contractor's agreement to an amendment to this Agreement.
- 24.3 Despite any consent given by TA, the Contractor:
- (a) must ensure the work performed by any subcontractor meets the requirements of this Agreement in full;
  - (b) is liable to TA for the acts or omissions (including negligent acts or omissions) of that subcontractor as if they were the acts or omissions of the Contractor;
  - (c) must ensure that the subcontractor is immediately terminable if this Agreement is terminated; and
  - (d) must ensure that the subcontract entered into contains clauses which impose obligations on the subcontractor and grants rights the same as the obligations imposed on and the rights granted by the Contractor in relation to:
    - (i) Intellectual Property;
    - (ii) Confidential Information;
    - (iii) privacy;
    - (iv) audit;
    - (v) an indemnity;
    - (vi) compliance with legislation;
    - (vii) termination;
    - (viii) subcontracting;
    - (ix) assignment;
    - (x) conflict of interest; or
    - (xi) resolution of disputes.

**25. DISPUTES**

- 25.1 If either party believes that there is potential for dispute under this Agreement, that party must give written notice to the other party specifying the matter concerned within 10 Business Days of becoming aware of the grounds for the dispute.
- 25.2 If either party gives to the other party notice under clause 25.1, the party receiving the notice must acknowledge receipt of the notice within five Business Days outlining a proposed solution. At all times the parties must negotiate in good faith to resolve the dispute.



- 25.3 The parties must continue to perform their obligations under this Agreement during the period in which any dispute is being resolved under clause 25.2.
- 25.4 Each party agrees that with the exception of urgent interlocutory relief the parties will not initiate any action in court against each other in respect of any dispute until the parties have reasonably sought to resolve the dispute in accordance with clause 25.2 and no sooner than 30 Business Days from notification of the dispute.
- 25.5 This clause 24 does not apply to:
- (a) legal proceedings by either party seeking urgent interlocutory relief from an appropriate court; or
  - (b) action by either party under or purportedly under any clause relating to termination or reduction in scope.

## **26. DISCLOSURE**

- 26.1 The Contractor must not:
- (a) represent or purport to represent TA, or express views or opinions purported to be representative of TA without the prior written agreement of TA;
  - (b) disclose or make public any information or material acquired or produced in connection with this Agreement or providing the Services; or
  - (c) engage in any misleading or deceptive conduct in relation to the Services.
- 26.2 The obligations of the Contractor under this clause shall survive the termination of this Agreement.

## **27. ASSIGNMENT**

- 27.1 TA may dispose of, declare a trust over, or otherwise create an interest in its rights under this Agreement without the consent of the Contractor, and may disclose to any potential holder of the right or interest any information relating to this Agreement or any party to it.
- 27.2 The Contractor cannot assign, encumber, declare a trust over or otherwise create an interest in its rights under this Agreement without the prior written consent of TA.
- 27.3 The Contractor must not consult with any other person or body for the purpose of entering into an agreement which will require novation of the Contract, without first consulting TA.

## **28. AUDIT AND ACCESS**

- 28.1 The Contractor agrees:
- (a) to give TA, or any persons authorised in writing by TA, access to premises occupied by the Contractor where the Services are being performed; and
  - (b) to permit those persons to inspect and take copies of any material relevant to the Services.
- 28.2 The rights referred to in clause 28.1 are subject to:
- (a) TA providing reasonable prior notice;

- (b) the Contractor's reasonable security procedures; and
- (c) if appropriate, execution of a deed of confidentiality relating to non-disclosure of the Contractor's confidential information.

28.3 Without in any way affecting the statutory powers of the Auditor-General under the *Auditor-General Act 1997* (Cth), and subject to the provisions of that Act, the Auditor-General is a person authorised for the purposes of this clause 28.

## **29. SERVICE OF NOTICES**

29.1 A notice, consent or other communication under this Agreement is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail, fax or electronic form such as email.

29.2 The parties address, fax number and email address for notices are set out in the Schedule.

29.3 A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is delivered, when it has been left at the addressee's address;
- (b) if it is sent by domestic mail, three Business Days after it is posted, and if sent by international mail seven Business Days after it is posted;
- (c) if it is sent by fax, when the addressee actually receives it in full and in legible form; and
- (d) if it is sent in electronic form:
  - (i) if it is transmitted by 5.00 pm (Sydney time) on a Business Day – on that Business Day; or
  - (ii) if it is transmitted after 5.00 pm (Sydney time) on the Business Day, or on a day that is not a Business Day – on the next Business Day.

## **30. FORCE MAJEURE**

30.1 If the Contractor is wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event then:

- (a) as soon as reasonably practicable (and in any event no later than 10 days) after the Force Majeure Event arises, the Contractor must notify TA and advise:
  - (i) the full particulars of the Force Majeure Event;
  - (ii) an estimate of its likely duration;
  - (iii) the obligations affected by it and the extent to which the Contractor is unable to perform those obligations;
  - (iv) the steps taken to rectify it; and
- (b) the Contractor's obligations under this Agreement will be suspended to the extent to which they are affected by the Relevant Force Majeure Event as long as the Force Majeure Event continues.

- 30.2 The Contractor must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible. However, this does not require the Contractor to settle any industrial dispute in any way it does not want to.
- 30.3 If a delay by the Contractor arising directly out of a Force Majeure Event exceeds 30 days, TA may immediately terminate the Agreement on providing written notice to the Contractor and clause 18 will apply as though the Agreement were terminated pursuant to that clause.

**31. WAIVER**

- 31.1 A failure or delay by a party to exercise any right or remedy it holds under this Agreement or at law does not operate as a waiver of that right.
- 31.2 A single or partial exercise by a party of any right or remedy it holds under this Agreement or at law does not prevent the party from exercising that right again or to the extent it has not fully exercised that right.

**32. SURVIVAL**

- 32.1 Unless the contrary intention appears, the expiry or earlier termination of this Agreement will not affect the operation of any provision relating to:
- (a) Intellectual Property;
  - (b) Confidential Information;
  - (c) Privacy;
  - (d) Audit;
  - (e) Compliance with other laws;
  - (f) Representations made by the Contractor;
  - (g) an Indemnity; or
  - (h) any other provision which expressly or by implication from its nature is intended to continue.

**33. COUNTERPARTS**

- 33.1 This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement

## Schedule 2

### SAMPLE MORAL RIGHTS CONSENT FORM

**DATE:**

I, \_\_\_\_\_, [position], at [company], of [address] unconditionally and irrevocably, to the extent permitted by law:

- (a) consent to any acts or omissions (that may occur before or after this consent is given), that would otherwise infringe my Moral Rights in the Works created by me [in the course of my employment with] / [in the provision of the Services to] [company], including:
  - (i) any alteration to or deletion from the Works;
  - (ii) any use of the Works that does not identify me as the author of the Works;
  - (iii) any use of the Works that may falsely attribute authorship of the Works to any other person;
- (b) waive all Moral Rights I might hold outside of Australia, in the Works created by me [in the course of my employment with] / [in the provision of the Services to] [company],

for the benefit of Tourism Australia ABN 99 657 548 712, its licensees, successors in title and anyone authorised by Tourism Australia to do any acts comprised in the copyright throughout the world.

In this deed:

**"Moral Rights"** means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute, that exist, or that may come to exist, anywhere in the world in the Works and includes Performers' Moral Rights.

**"Performers' Moral Rights"** means rights of integrity of performership, rights of attribution of performership, rights not to have performership falsely attributed, and rights of a similar nature conferred by statute, that exist, or that may come to exist, anywhere in the world in relation to the Advertising.

**"Services"** means [insert description of services performed].

**"Works"** means any copyright work created, produced or reproduced by me, specifically relating to the [provide brief description of works created].

**SIGNED, SEALED AND DELIVERED**

by \_\_\_\_\_  
in the presence of:

\_\_\_\_\_  
Signature of party

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name

<b>Signed and agreed by the Contractor:</b>	<b>Witness:</b>
<b>Name</b>	<b>Name</b>
<b>Position</b>	<b>Position</b>
<b>Date</b>	<b>Date</b>

Signature

Signature

<b>Signed and agreed by Tourism Australia:</b>	<b>Witness:</b> pscel
<b>Name</b> JANE WHITEHEAD	<b>Name</b> Geraldine Cornwall
<b>Position</b> VP AMERICAS	<b>Position</b> Corporate Services Manager
<b>Date</b> 7/10/15	<b>Date</b> 7/10/15

Signature

Signature